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The Montana Office of Public Instruction (OPI) concurs with comments submitted by the Council of Chief State School Officers and the National Title I Association.

In addition, the OPI offers the following comments.

**200.35** The language of this section requires the state to report expenditures for actual personnel expenditures and actual non-personnel expenditures of Federal, State, and local funds. Changing the current collection procedure will require time and cost. Further there are complications in determining what expenditures are attributable to individual schools located within each LEA. This specific feature will require clarification as to what is classified as a “school” to be included in the per-pupil definition. The following is a list of concerns related to identifying school-level expenditures:

Communication and network systems that are utilized district-wide would need to be allocated on an individual school basis. Although guidance and training could be provided it is unlikely that these expenditures could be determined with accuracy.

1. Transportation and food costs frequently are accounted for at a single LEA - creating an accurate set of expenditures by school would be unlikely to be attainable.
2. Salaries for Superintendents, assistant superintendent, directors and centralized staff are generally not considered at the school level.
3. Itinerant staff, social workers, psychiatrists etc. are frequently accounted for at a single location rather than distributed across multiple school locations.
4. Custodial and maintenance costs and supplies shared may be accounted for at the LEA level not the school level.
5. Consideration may need to be made for low enrollment districts where expenditures attributable to students may identify students directly, for example special needs expenditures where only one or two special needs students are enrolled.
6. We also request clarification to where to classify Medicaid reimbursements as these are reimbursed funds for expenditures that have already occurred. Would these expenditures be classified as federal or state and local?
7. The Montana Legislature required an audit due to a concern about redundant data collection points. Mandating a collection at the school level will increase the burden of clerks and business managers - for many beyond the reasonable scope of their position.

Currently the state of Montana could comply with section 200.35 if the expenditures related to the report card were to be listed at the LEA level only. Creating and collecting expenditures through a uniform procedure at the school level are currently beyond the ability of the state’s current collection procedure and providing guidance and developing validation and edit checks as well as integrating these processes into the audit procedure will be costly and require time that does not fit within the required guidance set down in 200.35.

**200.14(b)(4)** Montana is concerned about this provision including only students from tested in the statewide assessment. For our state this is a small subgroup. Restricting it to only certain grades decreases the number of students being accounted for. Even with an N size of 10, many districts will

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not meet the requirements to be held accountable for these students and restricting the students to be counted here to only students in grades being tested on the state assessment will further restrict the data. This is especially true of states with small populations or many rural schools.

**200.14(b)(5)(c)(1)** This section says an indicator must be comparable across all LEAs in the State when 200.14(b)(5) says the measurement of School Quality or Student Success may vary by each grade span. These contradict each other. If a state wants to use a measure of success for high schools that is not available for elementary schools (such as Postsecondary Readiness) then another indicator would need to be selected for the elementary school grade span that will not be directly comparable to the Postsecondary Readiness variable used for high schools. So therefore it isn't comparable across all LEA's in the state.

**200.16(b)(2)** Most English Language Proficiency (ELP) tests do not give an overall proficiency score or level unless the student takes all domains of the exam. Therefore to meet the requirements of this section, the progress determination for EL students cannot be based on the overall proficiency level. This is not feasible since basing a student's progress on 2 of the 4 domains for some students and all 4 of the domains for other students is not directly comparable to determine if they made progress. This is especially true for the ELP test Montana uses since some portions of the test are weighted more heavily than others. Using only the domains tested (when it is less than all of them) is also not comparable to each other because one student that does not take a domain will not necessarily miss the same domain as another student.

**200.17(a)** A minimum number of students, N, must be selected to determine if a sufficient number of students are enrolled in the school for whom to make determinations. This section does not take into account the difficulties of making this determination for low population or rural states. For example, if a state uses 10 as the minimum N number, then what does a state do for the accountability determinations for a school that has less than 10 students total? According to the law a determination can't be made for any number of students less than N. This ensures that an accountability determination would never be made for a school with less than the minimum N.

**200.18(b)(4)** This part of the proposed regulations does not take into consideration the low population of rural states. 200.17(a) states that states cannot make annual differentiation on a group of students lower than a certain N. In this part of the law it states that the single annual meaningful differentiation rating must be based on at least 3 district rating categories for each school. In a rural state there will be many schools that will not be able to have 3 categories that have at least the minimum N number of students required to make a determination. Are these schools then to be given no annual determination?

**200.18(c)(2)** This section of the proposed regulations does not specify exactly what "much greater" weight is. Also this part of the law causes some confusion on what to do with certain schools. The other 4 indicators specified in 200.18(c)(1) that factor into the annual meaningful differentiation are subgroups of students at the schools. Academic Achievement and Academic Progress both only include 3-8 grade students and one grade of high school, Graduation rate only applies to High Schools and Progress in Achieving English Language Proficiency only includes students that have been identified as EL. This causes a problem because if a state selects one or more variables for the indicator of School Quality or Student Success that includes all students at

the school then this variable has a higher likelihood of meeting the minimum N required in 200.17(a). So this leads to a list of schools in a state (especially a rural state) that do not meet the minimum N required for the first 4 indicators but do for the 5<sup>th</sup> (School Quality or Student Success) and this leads to an annual meaningful determination of that school that is based only on the 5<sup>th</sup> variable. That puts all the weight of their differentiation ranking into the 5<sup>th</sup> variable. According to this law that can't happen. So if this occurs with a school, does that mean they don't get an annual meaningful differentiation score (and quite possibly never will due to the number of students in the school)?

**200.18(d)(1) and 200.18(d)(2)** This section of the proposed regulations is restricting to the states developing their state plans. It is Montana's understanding that states can pick their own indicator or indicators for School Quality or Student Success, but those indicators can't have much influence on the overall annual meaningful differentiation. This portion of the law forces the annual meaningful differentiation to be very similar to the No Child Left Behind Act. Was that the intent?

**200.18(d)(3)** This section specifies what a state should do if they don't meet the minimum number of the EL subgroup. There are no specifications on what to do for smaller states when schools don't meet the minimum number of students on any of the Academic Achievement, Academic Progress, or School Quality/Student Success indicators.

**200.18(e)(3)(ii)** It is our understanding that this section specifies that if the Progress in Achieving English Language Proficiency indicator is excluded from the annual meaningful differentiation because of a low count of students, then the relative weights of the other indicators are to be afforded such weight that they are the same as when a school does include the Progress in achieving English language proficiency in the differentiation. This section is a little confusing on what is intended. For example, if the entire points a school can score for the differentiation is 100 with all indicators and if the Progress in Achieving English Language proficiency is worth 15 points then does that mean the total score a school can achieve without the Progress in Achieving English Language proficiency indicator is to remain at 100 or should the total allowable score then be 85 for this school? This same question applies for rural states with small schools that do not meet the minimum number of students needed in the other categories. Should the total remain at 100 points for those schools?

**200.18** A maximum State-determined timeline would help Montana support English Learners. This is one of the priorities of the education agency in Montana and any legislation to encourage schools to focus on these students would be beneficial. Currently the Montana long term English Learners are defined at 5 years. Our reasoning and research for this timeframe has been from observations in the field and include a research study done by WIDA, the testing company providing the English language proficiency test in Montana. Their recommendation is that most students, even the ones that start at the lowest level of English proficiency should be proficient after 4 years. Since this includes "most" students Montana has elected to allow for an additional year. Also the 5 year time frame allows that if a student is considered EL in kindergarten, then by the time they enter the 5<sup>th</sup> grade they should be exited from the EL program

**200.13 (b) Graduation rates**

**200.34 High School graduation rate.**

Clarification is needed on calculating graduation rates for homeless students. How do we determine homelessness?

1. Only students homeless during their senior year?
2. Students homeless at any point during their high school (9-12) career?
3. Students who have been homeless at any point during their school career (K-12)?

### **200.30 Annual State Report Card (f) Disaggregation of data**

(ii)(A)(2) Request clarification of the term “trailer parks” in the definition of homeless children. The law did not intend to label all children living in single and double wide trailers as homeless, but it has been broadly interpreted that way by some LEAs. The intent of the law was to define RV trailer parks, or other temporary places of lodging, as a homeless living situation.

### **299.13 Overview of State plan requirements**

(c)(1)(B)(ii) We recommend the removal of the requirement that the LEA cover the cost of transportation for foster care children if the LEA and the child welfare agency cannot agree on who shall pay because it places the full burden for transportation on the LEAs. It appears to leave child welfare with the option of refusing to coordinate services or to work with the district to determine the best placement of the child based on the child’s educational needs. The cost to LEAs with large numbers of foster children could be devastating.

(j)(iii) Title I D – Clarification on working with tribal facilities.

We need to be able to classify tribal facilities as falling under Subpart 1, with the understanding that a Tribal Government is the equivalent of a State Agency for the purposes of this subpart.

There are several advantages to serving tribal facilities under Subpart 1.

1. It allows the OPI to work directly with Tribal Education/Justice programs to serve youth in tribal detention or correctional facilities. Under Subpart 2 we have to work through an LEA and subcontract with the tribe. It has caused serious delays in implementing programs on some reservations.
2. If tribal facilities fall under Subpart 1 we can count students up to age 21 in the adult facilities and provide services to those youth who have not yet obtained a high school diploma or HiSet. Counting and serving this population could have tremendous positive long-term impacts within reservation communities.

We need to be able to provide Subpart 2 services through BIE schools when the local LEA is unable to oversee the program. In Busby, MT this would allow us to run services through the Northern Cheyenne Tribal school assuming that we served their local juvenile detention center under Subpart 2.

### **299.19 Supporting all students**

Clarification is needed on the use of Title I A set-aside funds to provide services to homeless students. Are all districts REQUIRED to set funds aside for this purpose? If so, this language needs to be repeated in the Title I A guidance. In NCLB the law only required that they set aside funds if the LEA had non-Title I schools with homeless enrollments.

And does this mean that ALL districts are required to set aside these funds, or only districts that have identified one or more homeless students?

Similarly, if an LEA has a group home, or has children in foster care the proposed regulations need to clarify if the LEA is also REQUIRED to set funds aside to provide additional services to those students. Similar to homeless, NCLB only required a set-aside if these students were enrolled in non-Title I schools.

(5)(ii) More clarification regarding the appropriate amount of professional development for homeless liaisons and for school personnel is needed. Are there particular issues that professional development for homeless liaisons should address? Or can they clarify that the state must define what a “highly qualified” homeless liaison looks like?

(5)(B) More clarity is needed around the need to grant full or partial credit to homeless students, including the need to remove barriers to participation in virtual coursework.

**200.19** - This proposed rule states that the state would have to identify schools for targeted support every two years even though the law clearly states that we only have to identify every three years. This proposed rule does not align with the law.

Suggested options for the “consistently underperforming” subgroups of students in 200.19 do not take into account what low population or rural states should do. It is specified that in identifying these schools that only the students in the subgroups must be counted and that at least 3 of the indicators must be used towards identification of a school. However, if the state uses a minimum number, N, of 10 then most subgroups in some states, including Montana, will not meet the requirement to have at least 3 indicators. If this is the case there needs to be some sort of guidance as to what a state should do. Are these schools to not be given a determination in that subgroup or should the determination be made on only the indicators that have enough in the subgroup? Potentially only 1 indicator will have enough students which would most likely be the indicator for School Quality or Student Success. Since in the law it says this indicator cannot have more weight than the other three, what is a state to do in this circumstance? Guidance is needed here.